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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-588

In the Matter of UNITED CASKET CO., INC.,
*Bankrupt.*

YORK-HOOVER CORP. and ELGIN METAL CASKET CO., INC.,
*Petitioners,*

*against*

UNITED CASKET CO., INC.,
*Respondent,*

*and*

DEPARTMENT OF TAXATION AND FINANCE OF THE STATE OF NEW YORK,
*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF FOR RESPONDENT DEPARTMENT OF TAXATION AND FINANCE OF THE STATE OF NEW YORK

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## TABLE OF CONTENTS


| | PAGE |
|---|---|
| Question Presented | 1 |
| Statement of the Case | 2 |
| Reason for Denying Certiorari | 4 |
| Conclusion | 6 |
| **Cases:** | |
| *Adderly* v. *Florida*, 385 U.S. 39 (1966) | 5 |
| *Bishop* v. *Wood*, 426 U.S. 66 (1975) | 5 |
| *Bob Jones Univ.* v. *Simon*, 416 U.S. 725 (1974) | 6 |
| *Commissioner* v. *Estate of Bosch*, 387 U.S. 456 (1967) | 5 |
| *Dixon* v. *Duffy*, 344 U.S. 143 (1952) | 5 |
| *General Box Co.* v. *United States*, 351 U.S. 159 (1956) | 5 |
| *Gooding* v. *Wilson*, 405 U.S. 518 (1971) | 5 |
| *International Harvester Co.* v. *Department of Taxation*, 322 U.S. 435 (1949) | 6 |
| *Marine Midland-Bank Central* v. *Gleason, et al.*, 47 N Y 2dd 758 (1978) | 4, 5 |
| *Ragan* v. *Merchants Transfer Co.*, 337 U.S. 530 (1949) | 5 |
| *Shuttlesworth* v. *Birmingham*, 382 U.S. 87 (1965) | 5 |
| *Matter of Thriftway Auto Rental Corp.*, 457 F.2d 409 (2d Cir. 1972) | 4 |

PAGE

In Re *United States* v. *City of New Britain, Conn.*, 347 U.S. 81 (1954) ..... 3

*United States* v. *Thirty Seven Photographs*, 402 U.S. 363 (1971), *reh. den.* 403 U.S. 924 ..... 5

*Winters* v. *New York*, 333 U.S. 87 (1948) ..... 5

**Statutes:**

New York Tax Law, Section 1141 subd. (B) (McKinney's 1969) .....*passim*

New York CPLR, Section 5234 (McKinney's 1968) 5

New York CPLR, Section 5237 (McKinney's 1968) 5

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### Question Presented

1. Was the United States Court of Appeals for the Second Circuit correct in affirming the lower Courts' determinations that under Section 1141(b) of the New York Tax

Law, the State is granted a perfected lien upon the filing of its tax warrant without the further necessity of a levy.

## Statement of the Case

The facts in dispute can be concisely stated as follows. The New York State Tax Commission docketed three (3) sales tax warrants against United Casket Co., Inc. (United), the State's tax debtor, on April 8, 1976.

Rather than levy upon the assets of United and thereby foreclose the possibility of its continuing in business, the State Tax Commission agreed to allow United to gradually reduce its indebtedness by means of installment payments to be made on a weekly basis. On April 9, 1976, the day following the docketing of its tax warrants, the State Tax Commission entered into a written stipulation with the taxpayer providing for payment of the then outstanding tax liability of $86,653.23 at the weekly rate of $2,300. (I. 21)*

On May 12, 1976, York-Hoover Corp. and Elgin Metal Casket Co. Inc. (York-Elgin) filed a financing statement creating a security interest in United's inventory, accounts, contract rights and general intangibles then owned or thereafter acquired. At that time credit had been extended for $201,736.37. Subsequently, York-Elgin extended further credit increasing the indebtedness to $327,500 as of September 24, 1976. (I. 22-3)

Before extending credit to United, York-Elgin made a search of the County Clerk's office and arranged for the satisfaction of the sole security interest on record. Apparently, however, at no time was a search conducted of the appropriate clerk's office which would have disclosed the existence of the State's previously docketed

* Numerical references preceded by "I" refer to the Index on Appeal to the United States Court of Appeals.



tax warrants. Instead, York-Elgin relied on the written representation of United that there were no liens, encumbrances or security interests in and to any of its property or assets. (I. 17)

On September 24, 1976, United filed a petition for an arrangement under Chapter XI of the Bankruptcy Act but was subsequently adjudicated as bankrupt.

During the pendency of the Chapter XI proceeding York-Elgin commenced an adversary proceeding to vacate the automatic stay provisions of the Order entered in the proceeding and sought a declaratory judgment that the security interest of York-Elgin was superior to the tax liens of both the State and Federal Government. The Internal Revenue Service conceded on the record that its tax lien was subordinate to that asserted by the State.

The Bankruptcy Court, District Court and Second Circuit Court of Appeals have all concurred in the determination that Section 1141(b) of the New York Tax Law granted the State a perfected lien upon the filing of its tax warrant without the further necessity of a levy. Thus, the Courts ruled, the State's claim was to be accorded priority status over that asserted by York-Elgin on the basis of "first in time is first in right". . . . In Re *United States* v. *City of New Britain, Conn.*, 347 U.S. 81 (1954). (7a)*

The Courts were further in agreement that administration expenses and wage claims were to be paid out of the State Tax Commission's share of the distributed assets. As this aspect of the ruling has not been appealed, the sole issue before this Court is whether the lower courts have properly construed Section 1141(b) of the New York Tax Law.

* Numerical references followed by "a" refer to the Petitioner's appendix in this Court.

Both the Bankruptcy Court and District Court placed great reliance on the prior decision of the Second Circuit Court of Appeals in *Matter of Thriftway Auto Rental Corp.*, 457 F.2d 409 (2d Cir. 1972), which held that the New York City Tax Law set forth in its Administrative Code (with verbiage almost identical to Section 1141(b)), created a lien upon the Bankrupt's assets notwithstanding a failure to seize the bankrupt's property or otherwise enforce the lien.

In the instant case the Second Circuit Court of Appeals came to the same conclusion by relying upon a decision of the New York Court of Appeals in the case of *Marine Midland-Bank Central* v. *Gleason, et al.*, 47 N Y 2d 758 (1978), which authoritatively construed Section 1141(b) as granting the State a perfected lien upon the mere docketing of its tax warrants. (18a-22a) The New York Court of Appeals stated:

> We interpret this express language [§ 1141(b)] to grant the State a perfected lien upon the filing of a tax warrant without the further necessity of a levy. In so holding, we reject the conclusion reached by the Appellate Division that State tax liens, although perfected upon docketing, may be extinguished if a levy is not made within the lifetime of a judgment execution. (18a)

## REASON FOR DENYING CERTIORARI

**Where, as here, the sole issue presented involves the interpretation of State Law, which the Court below correctly construed in conformity with the analysis of the State's highest court, there is no issue which warrants review by this Court.**

It has been a long standing policy of this Court that it will steadfastly refrain from construing State law where the lower court's interpretation is reasonable and/or there



has been an authoritative analysis made by the State's own judiciary. *Bishop* v. *Wood*, 426 U.S. 66 (1975); *Gooding* v. *Wilson*, 405 U.S. 518 (1971); *United States* v. *Thirty Seven Photographs*, 402 U.S. 363 (1971), *reh. den.*, 403 U.S. 924; *Commissioner* v. *Estate of Bosch*, 387 U.S. 456 (1967); *Adderly* v. *Florida*, 385 U.S. 39 (1966); *Shuttlesworth* v. *Birmingham*, 382 U.S. 87 (1965); *General Box Co.* v. *United States*, 351 U.S. 159 (1956); *Dixon* v. *Duffy*, 344 U.S. 143 (1952); *Ragan* v. *Merchants Transfer Co.*, 337 U.S. 530 (1949); *Winters* v. *New York*, 333 U.S. 87 (1948).

In *Marine Midland-Bank Central* v. *Gleason*, the New York Court of Appeals consciously and purposefully took the opportunity to render a definitive statement regarding the proper construction to be given Section 1141(b) of the Tax Law.

The petitioner has failed to refer this Court to any New York cases, let alone decisions by that state's highest court, which come to a contrary conclusion with respect to the application of this or similar tax statutes. In fact, all of the authority cited by the petitioner relates to the treatment historically given ordinary creditors attempting to enforce their judgments under New York's Civil Practice Law and Rules, a totally distinct and inapplicable priority system. Practice Commentaries, McKinney's Cons. Laws of New York, §§ 5234, 5239.

It would also appear that the petitioner's research has not disclosed any conflicting interpretations given statutes similar to Section 1141(b) of the New York Tax Law, among any of the Circuit Courts of Appeal.

Finally, the petitioner has failed to allege any infirmity in Section 1141(b) of the Tax Law, as construed by the lower court, which would give rise to an issue of constitutional significance. At the very best, the petitioner suggests a purely hypothetical situation. Namely, it is urged that if the lower Court's ruling is allowed to stand, consumers would be burdened by time consuming record

searches, an extremely unlikely development, and one which would nevertheless be a matter of State Law.

In view of the inherent authority of the sovereign to establish a taxing system according certain priorities to governmental agencies, this argument is frivolous. See *Bob Jones Univ.* v. *Simon,* 416 U.S. 725 (1974); *International Harvester Co.* v. *Department of Taxation,* 322 U.S. 435 (1949).

## CONCLUSION

**For the foregoing reasons the petition for a writ of certiorari should be denied.**

Dated: New York, New York
October , 1979.

Respectfully submitted,

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